IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR.

O R D E R

Dr. Surendra Kumar v. Shri Rajendra Kumar & Ors.

S.B.CIVIL WRIT PETITION NO.3969/2006
under Article 227 of the Constitution of India.

Date of Order :: 3rd October, 2007

P R E S E N T

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Jagdish Vyas, for the petitioner.
Mr. Sajjan Singh, for the respondents.

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BY THE COURT :

While adjudicating an application preferred by respondent Shri Rajendra Kumar to seek probate in his favour on basis of a will said to have been executed by Smt. Rukmani Devi who died on 4.12.1984, the District Judge, Bikaner by an order dated 13.4.2004 permitted the petitioner to place on record a cassette containing tape said to be having conversation recorded between the petitioner and one Shri S.K.Bissa. The District Judge while recording statements of the petitioner on 25.1.2005 refused to get the cassette aforesaid exhibited by observing as under:-

"नोट: अप्रार्थी नम्बर 2 के अधिवक्ता ने न्यायालय में प्रस्तुत कैसेट और उसके ट्रॉन्सक्रीप्शन को प्रदर्शित करवाना चाहा परन्तु इसमें प्रार्थी के अधिवक्ता ने आपत्ति उठाई। मेरे मत में गवाह एस.के. बिस्सा को न्यायालय में बुलाने पर उसे क्रोन्ट्राडिक्ट करने के लिए उसका बयान काम में लिया जा सकता है। अत: केसैट और ट्रान्सक्रीप्शन को इस गवाह के बयान में प्रदर्शित करवाने की अनुमति नहीं दी जाती है। बाद में आवश्यकता पड़ने पर इस गवाह के बयान कैसेट एवं ट्रान्सक्रीप्शन को साबित करवाये जाने के लिए करवाये जा सकेगें।"

The same observation was made by learned District Judge while recording statements of NAW-2 Shri Bhagwati Prasad on 25.2.2005.

Shri S.K.Bissa with whom conversation of the petitioner in presence of NAW-2 Shri Bhagwati Prasad was said to be recorded in the cassette aforesaid did not choose to appear before the trial court despite summon, thus, the petitioner preferred an application on 24.1.2006 seeking permission to produce evidence regarding cassette containing conversation and its transcription. The application aforesaid was rejected by the court vide order dated 17.3.2006, hence this petition for writ is preferred.

The contention of counsel for the petitioner is that the court while rejecting the application

dated 24.1.2006 failed to understand the real import of the orders dated 25.1.2005 and 25.2.2005 disallowing petitioner and Shri Bhagwati Prasad to get the cassette and transcription of conversation exhibited. According to counsel for the petitioner the trial court while recording statements of aforesaid two persons left it open to get the cassette and transcription exhibited at subsequent stage and that was not at all dependent to the statements of Shri S.K.Bissa who did not choose to be examined as a witness. It is stressed by counsel for the petitioner that the trial court by treating the cassette and the transcription a relevant fact by order dated 13.4.2004 permitted the petitioner to produce the same on record but erroneously denied to get it exhibited on the ground that the evidence was already closed and that shall preclude the petitioner from producing a valuable and relevant evidence.

Per contra, it is stated on behalf of respondent Shri Rajendra Kumar that the trial court rightly rejected the application by order impugned as once the evidence was closed there was no adequate reason to reopen the same. It is also emphasised that while recording statements of the petitioner and Shri Bhagwati Prasad the trial court made it clear that the permission to get the cassette and transcription exhibited shall be given at subsequent stage only to contradict the statements of witness Shri S.K.Bissa

and Shri S.K.Bissa did not choose to appear in witness box, therefore, there was no occasion to get the cassette and transcription exhibited.

Heard counsel for the parties.

It is not in dispute that by order dated 13.4.2004 learned District Judge by treating the cassette and transcription a relevant fact permitted the petitioner to produce the same on record. While recording statements of the petitioner on 25.1.2005 the trial court did not permit the petitioner to get the cassette and transcription exhibited with liberty to do so at subsequent stage. From the note referred in the statements of the petitioner as well as of Shri Bhagwati Prasad it appears that the permission to exhibit the cassette and the transcription was not given as at that time the statements of Shri S.K.Bissa were not recorded and the court considered it appropriate to get cassette and transcription exhibited to contradict the statements of Shri S.K.Bissa. Shri S.K.Bissa did not choose to appear before the court as witness, thus, the petitioner preferred the application to get the cassette and transcription exhibited to prove his case. The Court should have examined the fact about non appearance of Shri S.K.Bissa in witness box and then to the need of exhibiting the cassette and the transcription.

Learned District Judge on 13.4.2004 allowed to produce the cassette and transcription on record and its marking as exhibit was deferred while recording statements of the petitioner and Shri Bhagwati Prasad. The note mentioned by the court while recording statements of Shri Bhagwati Prasad as well as of the petitioner in any case does not preclude the petitioner from getting a valuable piece of evidence exhibited at subsequent stage only on the count that the evidence was already closed.

In view of it, this petition for writ deserves acceptance, therefore, the same is allowed. The order impugned dated 17.3.2006 passed by learned District Judge, Bikaner is quashed. The petitioner be permitted to get the cassette and transcription of conversation said to be recorded in the cassette exhibited and to produce in evidence subject to payment of cost to applicant Shri Rajendra Kumar in a tune of Rs.1100/-.

(GOVIND MATHUR),J.

Kkm/ps.